whether the court does not go too far in its attempts to protect employees, and there was a strong dissenting opinion in *Roshola* v. *Worden-Allen Co., supra,* as well as in the principal case.

NAVIGATION—RIPARIAN RIGHTS—EFFECT OF STATUTE.—Section 4620, Revised Statutes Missouri, 1919, provides that, "Every person who shall willfully and maliciously burn, injure or destroy any pile or raft of wood * * * or cut loose or set adrift any such raft * * * or shall cut, break, injure, sink or set adrift any boat, canoe, skiff or other vessel, being the property of another, shall be adjudged guilty of a misdemeanor". A lumber company floated a raft down a navigable stream and, having reached the point of destination in the evening, tied the raft for the night to a tree on the bank of an island owned by the defendant, president of a rival concern, although defendant had warned the company not to make such use of his property. Defendant cut loose the raft. *Held,* that defendant was guilty of a misdemeanor under the statute which plainly intended to protect commerce and "to subject the rights of riparian owners of land to the erasement of using such streams as public highways". *State* v. *Wright* (Mo., 1919), 208 S. W. 149.

Conceding that the legislative intent embraced the situation presented by the principal case,—and that contention is not beyond question,—it is by no means evident that the statute was to protect commerce by operating in the manner suggested by the decision. The opinion seems to imply that legislation had imposed a new servitude upon the riparian owner, yet such cannot be the fact, for the invasion of the latter's rights has been held to come within the constitutional inhibition against deprivation of private property without due process of law, and can be accomplished only under the power of eminent domain. *Yates* v. *Milwaukee,* 10 Wall. 497. If, on the other hand, the right of which the company took advantage existed at common law as an incident to navigation, it is difficult to see why the court found it necessary to deduce from a statute containing nothing of direct import on the subject, an inference merely declaratory of the common law. It is, however, extremely doubtful whether the privilege as here exercised by the lumber company, is to be regarded as a part of the common law of the state of Missouri. The code of continental Europe recognized little, if any, legal distinction between the use of the river bank and that of the river itself. FARNHAM, WATERS AND WATER RIGHTS, Vol. I, Sec. 143a. But the common law, as determined in England, had more regard for the riparian owner. *Ball* v. *Herbert,* 3 Term. 253. Likewise in this country, the civil law, at least in its full application, has been almost universally repudiated. *Reimold* v. *Moore,* 2 Mich. N. P. 15; *Ledyard* v. *Ten Eyck,* 36 Barb. 102; *Smith* v. *Atkins,* 110 Ky. 119; *The Magnolia* v. *Marshall,* 39 Miss. 109, (and cases cited): *Ensminger* v. *People,* 47 Ill. 384; *Weise* v. *Smith,* 3 Ore. 445. And the right of navigation in the case of navigable fresh waters, as a general rule, ceases at the water's edge. GOULD, WATERS, Sec. 99. It is hence safe to say that today in most states, including those formed from the Louisiana Territory where the civil law early prevailed under Spanish dominion, except the state of

Louisiana itself, the use of river banks is limited to that dictated by nothing less than a reasonable necessity. *Bass* v. *State,* 34 La. Ann. 494, which the United States Supreme Court refused to follow in *Hollingsworth* v. *Parish of Tensas,* 17 Fed. 109; *Hunter* v. *Moore,* 44 Ark. 184; *O'Fallon* v. *Daggett,* 4 Mo. 343. Although the latter case has frequently been invoked to support the argument for a liberal doctrine in favor of the public, the rule therein established is restrictive, and the court in *Smith* v. *City of St. Louis,* 21 Mo. 36, subsequent to a discussion of *O'Fallon* v. *Daggett,* says, "We are not aware that the Spanish law, in relation to riparian grants on the Mississippi, in Louisiana, has ever been considered as obtaining in Missouri."

PRIZE LAW—ENEMY GOODS—TRANSFER IN TRANSITU.—A cargo of tea consigned to a German firm at Bremen was shipped from a Chinese port in July, 1914, on a German vessel. Upon learning of the outbreak of war, the vessel took refuge on August 7, 1914, in the neutral port of Padung in Sumatra, where the cargo was unshipped and stored. In 1916 the tea was sold to a Dutch firm in Amsterdam. Fresh bills of lading were made out and the tea was reshipped on a Dutch steamship for London. It was discharged and warehoused at the port of London, where it was seized as prize. The tea was claimed as neutral property. *Held,* that the transfer *in transitu* was ineffective to defeat the belligerent's right of capture. *The Bawean* (1917), 14 Asp. M. C. 255.

The rule was well established, at least as early as the time of Lord STOWELL, that risk of capture once incurred cannot be divested by transfer *in transitu.* See *The Vrow Margaretha* (1799), 1 C. Rob. 366; *The Packet De Bilboa* (1799), 2 C. Rob. 133; *The Carl Walter* (1802), 4 C. Rob. 207; *The Jan Frederick* (1804), 5 C. Rob. 128. The rule has been criticized as peculiarly favorable to sea power. It has always been unpopular among neutral traders, among whom there has been a good deal of misapprehension with respect to its real significance. It will hardly be relaxed, however, while war and the right of capture are recognized. See *The Southfield* (1915), 13 Asp. M. C. 150; *The Bawean, supra.* Compare *The United States* (1916), 13 Asp. M. C. 568. The *raison d'être* for the rule was cogently stated by Mr. Justice STORY as follows: "Such contracts, however valid in time of peace, are considered, if made in war or in contemplation of war, as infringements of belligerent rights, and calculated to introduce the grossest frauds. In fact, if they could prevail, not a single bale of enemy's goods would ever be found upon the sea." *The Ship Ann Green* (1812), 1 Gall. 274, 291.

PRIZE LAW—NEUTRAL OR ENEMY CHARACTER OF MERCHANT SHIPS.—Article 57 of the Declaration of London provided that the neutral or enemy character of a merchant ship should be determined by the flag which the vessel is entitled to fly. It was urged by the drafting committee, in its report to the Naval Conference, that this test should be relied on exclusively and all considerations connected with the personal status of the owner discarded. The futility of such artificial tests and the ruthless elimination of technicality from prize law are well illustrated in two of the more recent English prize cases. The *Proton* was registered as a Greek ship and entitled to fly the Greek flag.